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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,981	07/22/2003	Thomas Zdeblick	MSDI-168/PC566.02	6600
52196 7590 07/15/2008 KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709				
EXAMINER				
PREBILIC, PAUL B				
ART UNIT		PAPER NUMBER		
3774				
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07/15/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/624,981

**Applicant(s)**

ZDEBLICK ET AL.

**Examiner**

Paul B. Prebilib

**Art Unit**

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1.2.65-73.75.79-87.90-98 and 101-104 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1.2.65-70.72.73.75.79-84.86.87.90-95.97.98 and 101-104 is/are rejected.
- 7) ☒ Claim(s) 71.85 and 96 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 98, 102, and 103 are rejected under 35 U.S.C. 102(e) as being anticipated by Michelson (US 5,609,635). Michelson anticipates the claim language where:

- the occlusion body as claimed is the implant (700); see Figures 31 and 32 as well as column 12, lines 36-67;
- the porous material as claimed is because of holes (724) or the porous material (see column 9, lines 46-54);
- the inner surface as claimed is opposite the outer surface that is the end surface (see Figure 32);
- the engaging surface as claimed is surface (702);
- the anchors as claimed are pivotal members (707);
- the axial spacing is along an axis that runs along the axis of the right side spikes (708) (see Figure 31).

With regard to claim 104, the spikes of Michelson are the lips with curved profiles.

Claims 98, 102, and 104 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (WO 90/00037). Michelson anticipates the claim language in an equivalent manner to that of related patent US Patent 5,609,635; see Figures 15 and 16 that constitute the same embodiment as Figures 31 and 32 of the US Patent; see also page 15, line 27 et seq. of this WO Patent.

Claims 1, 2, 65-70, 72, 73, 75, 79-84, 86, 87, 90-95, 97, 98, and 101-104 are rejected under 35 U.S.C. 102(b) as being anticipated by Kong (US 4,951,839). Kong anticipates the claim language where:

- the occlusion body as claimed is the dispensing unit (20) of Kong (see Figure 17 and column 4, line 42 et seq.);
- the outer surface as claimed is the top side of wall (30);
- the inner surface as claimed is bottom surface between the fingers (28) that rests on the top of the container (20);
- the engaging surface as claimed is the outside surface of the wall (30);
- the aperture as claimed is the top of chamber (22);
- the pair of anchors as claimed are the pair of fingers (28);
- the lip as claimed is the lower end (34);
- the thru-hole as claimed is the top of container (26);

- the engaging surface or sidewall (30) can be use to engage a theoretical container with an outer cover surrounding the container neck and dispensing unit (20).

Regarding claim 66, the outward facing lip is best shown in Figure 1 where the outward direction is away from the dispensing unit.

Regarding claims 68 and 69, paper is considered to be a biocompatible and biodegradable polymer of cellulose; see column 5, lines 34-42.

Regarding claim 70, paper is considered to be porous because it has pores between the fibers of the fibrous mat.

#### ***Allowable Subject Matter***

Claims 71, 85, and 96 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3774

/Paul Prebilio/  
Paul Prebilio  
Primary Examiner  
Art Unit 3774